

# UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and Advanced Level

## MARK SCHEME for the November 2005 question paper

### 9084 Law

9084/02

Paper 2, (Data Response) maximum mark 25

This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which Examiners were initially instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began. Any substantial changes to the mark scheme that arose from these discussions will be recorded in the published *Report on the Examination*.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the *Report on the Examination*.

The minimum marks in these components needed for various grades were previously published with these mark schemes, but are now instead included in the Report on the Examination for this session.

- CIE will not enter into discussion or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the November 2005 question papers for most IGCSE and GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.



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### Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

**Band 1:** The answer contains no relevant material.

**Band 2:** The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge

OR

The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

**Band 3:** The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial

OR

The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

**Band 4:** Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue

OR

The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

**Band 5:** The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

<b>Question</b>	<b>1</b>	<b>2</b>
Band 1	0	0
Band 2	6	6
Band 3	12	12
Band 4	19	19
Band 5	25	25

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- 1 (a) This part of the question expects the candidates to use their knowledge of different types of delegated legislation and to state the particular type that is the subject of the case in question (SI) and by whom they are made e.g. ministers in government departments. Other types of DL are orders in council and bye-laws. Candidates would also be expected to describe by whom they are made.
- (b) The enabling Act mentioned in this case is the Industrial Training Act 1964. The purpose of the enabling Act is that it allows the ministers to make such SI as is appropriate and necessary.
- (c) The candidates should state that legislation is invalid if it claims to go beyond the powers delegated by the enabling Act, i.e. it is ultra vires – ‘outside their powers’. Such invalidity can be challenged by the courts by way of judicial review.
- They must also state that there are two types of ultra vires, e.g., procedural ultra vires – *Agricultural Training Board v Aylesbury Mushrooms Ltd* [1972] and substantive ultra vires – *R v Secretary of State for Social Security ex p B* [1996].
- (d) This part of the question asks the candidates to describe how parliament controls DL by way of affirmative resolution procedure –DL is laid before both Houses for 28 or 40 days and negative resolution procedure –DL put before parliament for 40 days.
- 2 (a) (i) unlawful but not immoral
- (ii) immoral and unlawful
- (b) The phrase ‘corrupt public morals’ is taken from the case of *Shaw v DPP*. It is assumed that the public – the reasonable man – has morals or moral rules which they live by. To corrupt is to encourage or influence them to break these rules and to participate in depraved and bad behaviour.
- (c) Candidates should use this part of the source material to lead into the Hart-Devlin debate and decide which argument supports the different approaches of Lords Templeman and Slynn. Discuss whether or not the law/courts should get involved in people’s private lives and what they do in them. Candidates who include other supportive viewpoints should be generously rewarded.
- (d) Doctrine of binding precedent; *stare decisis*; ratio decidendi and obiter dicta; hierarchy of the courts and accurate law reports. Distinguishing, overruling, and reversing. Practice Statement of 1966. *Young v Bristol Aeroplane Co Ltd*.